

MINUTES



REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD Council Chambers Thursday, September 12, 2002, 7:30 P.M. 777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Bogue, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeno, McKillop, Sacks, Caveglia, Halliday, Thnay
CHAIRPERSON Bogue
Absent: COMMISSIONER None

Staff Members Present: S. Ehrenthal, N. Weisbrod, R. Patenaude, M. Conneely,

General Public Present: Approximately 200, Overflow room was used.

PUBLIC COMMENT - There was no public comment.

AGENDA

1. **Variance Application No. PL-2002-0400 Ernest Armijo (Applicant/Owner):** Request to Retain an Attached Shed that is Situated 4'4" from the Rear Property Line Where a Minimum of 10' is Required; To Allow 33% of the Rear Yard to be Covered Where a Maximum of 20% May be Covered; For and Exception to the City's Design Guidelines which Require that Accessory Structures Match the Primary Structure – The Property is Located at 26476 Cascade Street in the RS (Single-Family Residential) District
2. **Referral by the Planning Director – Administrative Use Permit Application No. PL-2002-0262 – Mark Thomas (Applicant)/ Las Vegas Trail Theatre Company (Owner) –** Request to Convert an Existing Theater to a Religious Facility with Administrative Offices – The Property is Located at 24800 Hesperian Boulevard in the Neighborhood Commercial (CN) District

PUBLIC HEARING

1. **Variance Application No. PL-2002-0400 Ernest Armijo (Applicant/Owner):** Request to Retain an Attached Shed that is Situated 4'4" from the Rear Property Line Where a Minimum of 10' is Required; To Allow 33% of the Rear Yard to be Covered Where a Maximum of 20% May be Covered; For and Exception to the City's Design Guidelines which Require that Accessory Structures Match the Primary Structure – The Property is Located at 26476 Cascade Street in the RS (Single-Family Residential) District

Consulting Project Planner Weisbrod described the property and the accessory structures. He noted that staff recommended denying the variance. He commented that staff received five phone

calls in opposition to the variance and two in support. However, staff was unable to find special circumstances to approve the variance.

Commissioner Halliday asked if the front door faces Cascade or Hickory and asked why the designated area is considered the back yard.

Principal Planner Patenaude said the way the subdivision is laid out, the front yard would normally be Hickory. Typically the narrow dimension of the lot would be the front yard, however, the determination of the rear yard is left to the City. To insure adequate open space for this home, it was determined that the front yard is Hickory and the rear yard is the opposite.

Commissioner McKillop asked how long has this structure been there.

Consulting Project Planner Weisbrod stated that the owner said it was there 35 years ago when he bought the house, and there had been no complaints about it in all that time.

Commissioner Caveglia then asked why it was on the agenda for discussion.

Consulting Project Planner Weisbrod explained that there was a complaint made to Community Preservation, apparently from someone in the neighborhood.

The public input portion opened at 7:42 p.m.

Applicant Ernest Armijo said he would do whatever it would take to make it better. He said he needs the shed. He then read a statement from a neighbor, Gloria Kennedy, who could not attend. She said the shed poses no threat to the neighborhood and should not be removed. He then read a statement from neighbors across the street who supported the application as well.

Commissioner Halliday asked about the neighbor living immediately next door to the left on Cascade and whether they had expressed an opinion.

Consulting Project Planner Weisbrod said he had received no response from those neighbors, that house is for sale.

Commissioner Caveglia complimented the applicant for their upkeep of the property. He said he thought this issue was the roof and asked Mr. Armijo whether he was willing to re-roof and make the shed similar to the house.

Mr. Armijo said he would be willing to do that if that is what it takes.

Commissioner Caveglia added that if the applicant was willing to stucco the shed and replace the roof, this was a special case that deserves some consideration

Commissioner McKillop asked of what use is the shed.

Mr. Armijo explained that the shed is only a storage/work area.



Commissioner Zermeño asked whether more landscaping might be placed in front of the fence, to screen the shed from the street.

Mr. Armijo explained that this area is cement.

Danny Rabuco, a neighbor said he has known the applicant for ten years. He spoke in favor and felt that this was a conflict neighborhood problem as there are other houses with the same type of facility in the neighborhood.

Mark T. Bouchard indicated that he was cited by Community Preservation and commented on his violation of side access parking. He felt that this was selective enforcement and discrimination of the City's residents, and he felt that staffs in Planning, and Community Preservation are often in conflict. He said anonymous complaints should not be permitted.

Commissioner Caveglia asked what Mr. Bouchard had done in violation of the City Ordinances. He agreed that this was a different issue.

Harry Deane, a neighbor, spoke in favor of the applicant. He recognized the need for Community Preservation and neighborhood support. He reported that as he walked around the block he noted the most serious problem in the neighborhood is a parking shortage.

Chairperson Bogue closed the public hearing at 8:00 p.m.

Principal Planner Patenaude commented that the structure appears to have been constructed without any building permit. He noted that a permit would need to be applied and that the structure might need to be completely rebuilt to bring it into code compliance and the City requires at least a 5-foot setback. It would be a chore for Mr. Armijo to go through the permit process. He then added, were the variance to be approved, staff would need to bring it back at a future meeting with conditions of approval and findings.

Commissioner Sacks confirmed that the building had been at this location for 35 years. She then asked about legal side parking on the concrete on the side yard.

Principal Planner Patenaude indicated that the parking might be illegal. However, there is the possibility of providing parking within the rear yard, with restrictions.

Commissioner Halliday moved, seconded by Commissioner Sacks, to deny the variance. She noted that she is a proponent of allowing flexibility in the older neighborhoods. However, in this case there needs to be at least a five-foot variance. She said she could not make findings to accept the variance.

Commissioner Zermeño spoke against the motion. He said he felt that since the owner had already used the shed for 35 years, he should be allowed to keep it. He said that in our older

neighborhoods, he felt that there might be room for growth for their properties.

Commissioner Thnay said this was a difficult decision because this structure has been around for 35 years, as well as for a good neighbor's intent. However even if we grant this variance, the shed would have to be rebuilt. Staff indicated that through proper requests, the applicant could apply for a building permit to allow a legal shed to be built under public code. In either way, the cost would be a significant amount of investment.

Commissioner McKillop said approving the variance would probably mean rebuilding the building from scratch. She encouraged Mr. Armijo to plan, get the correct permit and build a new shed that conforms to the yard requirements.

Commissioner Sacks said members constantly wrestle with the problem of how to allow the older neighborhoods to expand their homes. However, she was not willing to approve illegal facilities.

Commissioner Caveglia said he, too, struggled with the issue, and decided that if the applicant is going to have to tear it down anyway, he might as well come back to the Planning Department and build a new one correctly.

The motion **carried** by the following vote:

AYES:	COMMISSIONERS	Halliday,	Thnay,	Sacks,
		McKillop		
	CHAIRPERSON	Bogue		
NOES:	COMMISSIONER	Zermeño		
ABSENT:	None			
ABSTAIN:	None			

3. **Referral by the Planning Director – Administrative Use Permit Application No. PL-2002-0262 – Mark Thomas (Applicant)/ Las Vegas Trail Theatre Company (Owner) – Request to Convert an Existing Theater to a Religious Facility with Administrative Offices – The Property is Located at 24800 Hesperian Boulevard in the Neighborhood Commercial (CN) District**

Associate Planner Emura indicated that the Heart of the Bay Christian Center now owns the property. He described the location and the their previous location as well as the conversion improvements. The theatre building would give them a total of 30,000 square feet within the building with an addition. They would replant 31 trees that were severely pruned and add a substantial number of others as well. He noted that in the 90's a number of commercial buildings were turned into non-commercial uses within this area along Hesperian Boulevard and La Playa Court. The Southgate Neighborhood Task Force expressed concern that these commercial properties were being converted to non-commercial uses. As a policy, they recommended that the commercial strip along Hesperian Boulevard be retained. The Korean Baptist Church and the San Leandro Elks Lodge comprise 15 percent non-commercial use in this area. The approval of this project would make it 43 percent non-commercial use in the area. He noted that this is an excellent site for retail. There are very few vacant commercial parcels of this size available in the City of



Hayward. He then enumerated the retail possibilities for the site. He noted that a large retailer or mix-use residential/retail would be appropriate for the site. He noted that the City has a compelling interest in retaining the property for commercial use. He commented that converting this building into non-commercial use would weaken the commercial viability of the area.

Chairperson Bogue commented that members had received a binder of information from Heart of the Bay Christian Center. He also noted that he had attended the Southgate Area Homeowners meeting when the applicant made a presentation. He also noted that he had served on the Southgate Neighborhood Task Force.

Chairperson Boug then opened the public hearing at 8:31 p.m.

Mark Thomas, Union City, senior pastor, noted that the Church was established in 1982 when it grew from 125 parishioners to 991. He enumerated the various facilities that have been leased for church services. He indicated that the regionally based type church with over thirty departments is different from the traditional neighborhood church. He stressed that his congregation is impacted due to lack of space at its current location. It is a substantial burden for this church not to be able to own its own property. This project is financially feasible as the property was purchased.

Douglas Wiele, Latrobe, CA, President of Foothill Partners, said they are in the shopping center business and were retained by the Church to evaluate the property for retail. He noted that this is a very desirable property since this is a well-located parcel. The building is in good condition, however, it does not lend itself to the uses proposed by staff. It does not lend itself to retail use, in that it does not have the kind of access retailers. There is no left turn into or out of the property. He said their studies show that there is a significant variance between the market value and the underlying land value. Since it is not within the Redevelopment District for the City of Hayward, there is no financial mechanism to subsidize the value of the property as it stands, and the value of the property as a large retail outlet.

Matt Francois, San Francisco, attorney for Heart of the Bay, emphasized the need for the City to accept the application. He commented on the law regarding a church versus other uses in this zoning area. If this permit is denied, he said the City of Hayward would be obligated to pay Heart of the Bay's legal fees, were this to be litigated.

Commissioner Halliday asked the attorney whether the law precludes the City from requiring an administrative or conditional use permit.

Mr. Francois said he did not believe that was the intent of the Federal Law. He said this law was meant to limit the discrimination against Church use. He noted that the land use issues and reasonable conditions could be imposed in this instance, as long as it is not a substantial burden on Heart of the Bay's use.

Roy Gordon, Hayward, said he was also on the Southgate Task Force, which was completed in 1998. He asked why the representatives of Heart of the Bay were not informed of the Zoning demands of that plan when they first applied for the Use Permit. Too often people are given inaccurate or incomplete information from the City of Hayward. He commented that it would now be a burden on them since they have now closed escrow on the building. He described the number of buildings, which have been closed down in the area and noted that there is room in the Southland area for any number of retail uses. He emphasized his support for this application.

Commissioner Halliday asked him to elaborate on his comment that Heart of the Bay was misinformed by the City of Hayward. She then asked staff whether it was City policy to give applicants the Neighborhood Plan for an area at the time of an application.

In response, Mr. Gordon said they did not receive the information of the Southgate information plan at the time they applied for their permit.

Principal Planner Patenaude stated that it was usual to provide this information at the time of the application as the proposal warrants.

Associate Planner Emura added that when Heart of the Bay came in for a pre-application meeting and the information was not given to them. Once the application was submitted, Heart of the Bay was informed of the policy in the Neighborhood Plan.

Jayne Santos Caruso, Hayward, said she has been involved with the youth in the community. She supports the application because Heart of the Bay will help to provide education and tutoring services as well as counseling. She noted the activities at the Church for the youth. She described it as a safe haven. As an educator, she stressed the need for an alternative for youth in Hayward.

Jim Swanson, Concord, landscape architect, said they have diligently worked with City Landscape staff and intend to plan an enhancement for the project.

David Austen Smith, Danville, also an architect who designs churches, stated that this is the most logical property that he has converted. This theater has non-bearing weight walls, which can be readily removed. There is plenty of parking on site. It is a natural as the building has the weight bearing wall runs parallel along the Hesperian. He added that this is the most logical conversion he had ever seen.

Commissioner Halliday asked for clarification on the purpose of the north/south weight-bearing wall.

Mr. Smith noted that the weight-bearing wall would not have to be disrupted if used for a church but would be if it were used for retail.

Assistant Pastor Tom Hernandez, San Leandro, read a supporting statement submitted by Bill Lynch, a Hayward Firefighter. He noted that the Church provides a haven for young people in the area.

Sheri Woods resides in San Jose and spoke on the positive efforts of the children's programs at the



Heart of the Bay Christian Center.

Brenda Blanton, Hayward, spoke in support of the church.

Joseph Mayorga, Hayward, is a member and lives in the Hayward hills area. He described the programs offered by the church for men, that includes mentoring and Bible ministry. He indicated that traffic from this church would be greatest during off-peak times. He commented that the primary services are held on Sundays and Wednesday evening.

Marcella Parras, Hayward, described her experiences with the senior citizen program that provides visiting services to hospitalized elders. She commented on the public transportation availability for seniors.

Pamela Nickolopoulos, business owner in Hayward and member of the Heart of the Bay and spoke in support of the Church.

George Nickolopoulos, business owners in Hayward and employed in Hayward for over thirty years, noted the various worthy causes that he has supported as the DARE program, Sun Gallery and other Hayward programs. He has commented that the church can improve its commitments by owning its own property. He urged approval.

James Ersando, Daly City, operates a limo service and spoke in favor of the location and its easy directions.

Paul Dede Vernocy, San Ramon, team leaders for married couples that support families. He asked for support for the proposal.

Russell Crooks, San Leandro, also a member of the Church, described the teaching classes that take place at the church to assist members in improving their personal lives. He also spoke on the advantage of this location as compared to its present location in the ingress and egress of this site.

DeDe Martinez, Hayward, chose to commute to Silicon Valley daily so that she could attend church.

Steve Nirschl, Castro Valley, is the youth pastor and spoke on the impacts that its youth ministry offers to this community. It serves youth with a safe place that offers arcade games and various youth oriented activities. He also meets with college age students. Currently there is limited space at its current site due to the school district taking back a large portion of the building.

Connie Bennett, daughter of former Pastor Bennett of Palma Ceia Baptist church, and was raised in Hayward. She spoke of her experiences and urged approval of this full-service Christian ministry. She also spoke on the professionalism of the administrative staff of the HBCC.

Michael Vagenas, San Ramon, offered his opinion and information on revenue generation in revitalization of citizens.

Ingrid King, Oakland, employed by HBCC, clarified that there are twenty-seven employees that work daily on the site, and there are prayer meetings. She elaborated on the lease terms with the School District at the present location and noted that the actual wording is optional for extending the lease. She commented that the school district could end the lease should it need the classrooms.

Brenda Thomas, Union City, co-pastor of HBCC, urged approval on the administrative use permit and suggested that the Commission weigh the benefits of the services provided by HBCC in comparison to the amount of revenue that might be generated. She assured the Planning Commissioners that HBCC would improve the Southgate neighborhood.

Steve Cassidy, San Francisco, attorney for the Church, discussed site security, generation of revenues, positive harmonious use, and the similarity between the assembly use by the theater and the Church.

Mark Hudson, Hayward, spoke in support of Heart of the Bay Christian Center.

The public hearing was closed at 10:03 p.m.

Chairperson Bogue **moved**, seconded by Commissioner Caveglia, to deny the administrative use permit subject to the findings for denial. He maintained that there is a compelling interest for the City to maintain the property for commercial district property. If you look at the immediate area, the two blocks are commercial. This is important and is a compelling interest to maintain that property as such.

Commissioner Halliday said she would be opposing the motion. She said the City has an interest in protecting its commercial district. However there are a number of properties in that area, which are underutilized and available for use. She noted that this is not a redevelopment area and the City of Hayward does not own either of the properties in question. She noted that since the properties are privately owned, the City needs to respect the rights of property owners. This is not totally out of character. As large as this church is, this may be the best location. There is an economic viability. A good point was made about transit and that big box shoppers don't usually take the bus as church members might. As far as traffic impacts, she opposed the Home Depot project. This use works the way the City tries to make things work. She indicated that the public presentation was excellent.

Commissioner Thnay said he agreed with Commissioner Bogue and the City staff. He said it is more like a wish than a reality in filling many of commercial spaces. He called attention to significant areas in the vicinity, which might feel compelled to move into the area with the Church there. He commented on what the City would like to see for this site, but in facing reality, this would be a good and positive draw for the City of Hayward. He ended by saying he would support a motion by Commissioner Halliday to support the Church.



Commissioner Sacks questioned 'the use of classrooms.' She clarified that there is no school associated with the Church.

Rev. Thomas explained that classrooms are occupied by various programs.

Commissioner McKillop discussed the possibility of a mixed-use development on the property. She said there are extraneous issues with that proposal. The Heart of the Bay Christian Center has made a compelling case for this proposal. She said she would oppose the motion.

Commissioner Zermeño commended the church for its excellent presentation. He said residents would like to see better City services. Losing this as a commercial site would not serve the residents. As a result, he said he would be supporting the motion.

Commissioner Caveglia said he was impressed by most of the people who spoke and their sincerity in supporting the Church. He said he found it disturbing that the highly paid lawyers come in to say the City of Hayward has no right to enforce their zoning laws if a church buys the property and then threatens a very punitive law suit if we dare try. He suggested that this issue be taken onto the City Council.

The motion **failed** by the following vote:

AYES:	COMMISSIONERS	Caveglia, Zermeño
	CHAIRPERSON	Bogue
NOES:	COMMISSIONER	Halliday, Thnay, Sacks,
		McKillop
ABSENT:	None	
ABSTAIN:	None	

Commissioner Halliday **moved**, seconded by Commissioner Thnay, to direct staff to prepare the necessary documents that include suitable environmental documents and conditions and findings in support of approval.

Commissioner Sacks said she would vote for the motion, but admitted she was put off by the high-handed beginning to the public hearing.

The motion **passed** by the following vote:

AYES:	COMMISSIONERS	Halliday, Thnay, Sacks,
		McKillop
NOES:	COMMISSIONER	Caveglia, Zermeño
	CHAIRPERSON	Bogue
ABSENT:	None	

ABSTAIN: None

Assistant City Attorney Conneely said that technically this decision could be appealed to Council, but doubt if any would do so at this point since the decision is just direction to staff.

ADDITIONAL MATTERS

3. Oral Report on Planning and Zoning Matters

There were no oral reports made.

4. Commissioners' Announcements, Referrals

Commissioner Sacks said she likes the looks of the Yamaha development on Foothill, and the Tennyson project. Both look good.

Chairperson Bogue noted that the Lyons on Hesperian is now Luigis' Restaurant. He commented that it is very nice.

Commissioner Thnay asked about the City of Hayward checking with the contractor at Mission and Industrial. He noted that the landscape near golf course has been damaged and asked the City of Hayward to check into it.

Commissioner McKillop asked whether the Home Depot issue has been resolved.

Principal Planner Patenaude noted that they have not yet fully complied, however, City staff is working with them. He noted that they had been before the CCCIC..

Commissioner Caveglia indicated that he was surprised that the Home Depot traffic is not as bad as he anticipated that it would be. He said the ingress and egress seem to be handling any problems. The fears were unnecessary, things are working fine.

APPROVAL OF MINUTES

- July 11 – were held for further corrections
- July 18 – were held for further corrections
- June 21 – were brought back
- July 28 – Passed

ADJOURNMENT

The meeting was adjourned by Chairperson Bogue at 10:39 p.m.

APPROVED:

Barbara Sacks, Secretary

MINUTES



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COMMISSION, CITY OF HAYWARD
Council Chambers
Thursday, September 12, 2002, 7:30 P.M.
777 "B" Street, Hayward, CA 94541**

Planning Commission

ATTEST:

Edith Looney
Commission Secretary